

**STATE OF LOUISIANA
DIVISION OF ADMINISTRATIVE LAW
ETHICS ADJUDICATORY BOARD**

BOARD OF ETHICS	* DOCKET NO. 2020-5779-ETHICS-A
	*
IN THE MATTER OF	*
	*
BRADLEY C. ZAUNBRECHER	* AGENCY TRACKING NO. 5120-045

DECISION AND ORDER

The Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, requested a hearing to have the Ethics Adjudicatory Board determine whether Bradley C. Zaunbrecher failed to file his 10-P campaign finance disclosure report by the sixth day after it was due, and failed to file his 10-G campaign finance disclosure report by the eleventh day after it was due, in connection with his 2019 candidacy for the office of Commissioner of Agriculture and Forestry. The Louisiana Board of Ethics proved that Bradley C. Zaunbrecher failed to file his 10-P campaign finance disclosure report by the sixth day after it was due and failed to file his 10-G campaign finance disclosure report by the eleventh day after it was due. For each report, the Louisiana Board of Ethics is authorized to impose upon Bradley C. Zaunbrecher an additional civil penalty of up to \$10,000, as allowed by La. R.S. 18:1505.4(A)(4)(a) and (b).

APPEARANCES

The hearing in this matter was conducted September 29, 2020, in Baton Rouge, Louisiana, before the Ethics Adjudicatory Board, Panel A.¹ Charles E. Reeves Jr., attorney

¹ The panel consisted of administrative law judges A. Brock Avery (presiding), Lance B. Vinson, and Sherlyn Shumpert.

for the Louisiana Board of Ethics, appeared for the hearing. Though properly noticed,² Bradley C. Zaunbrecher did not appear for the hearing.

STATEMENT OF THE CASE

In connection with his 2019 candidacy for Commissioner of Agriculture and Forestry, the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure (“BOE”) imposed civil penalties on Bradley C. Zaunbrecher for failing to timely file two campaign finance disclosure reports. One report was due ten days before the primary election (10-P report), and the other was due ten days before the general election (10-G report). The BOE then requested a hearing to have the Ethics Adjudicatory Board (EAB) determine whether Respondent failed to file a 10-P report by the sixth day after it was due, and a 10-G report by the eleventh day after it was due, which could subject him to an additional civil penalty of up to \$10,000 for each report, as provided by La. R.S. 18:1505.4(A)(4)(a) and (b).

Counsel for the BOE offered twelve exhibits during the hearing; all were admitted into evidence.³ Counsel presented the case on behalf of the BOE, the record was closed, and the matter was submitted for decision.

This adjudication is conducted in accordance with Code of Governmental Ethics, La. R.S. 42:1101, *et seq.*, the Campaign Financial Disclosure Act (CFDA), La. R.S. 18:1481, *et seq.*, the Administrative Procedure Act, La. R.S. 49:950, *et seq.*, and the enabling legislation of the Division of Administrative Law, La. R.S. 49:991, *et seq.*

² BOE Exhibit 12 (July 13, 2020, *Amended Conference Report and Scheduling Order*, and July 14, 2020, *Amended Notice of Hearing*).

³ All of the exhibits had been certified by affidavit to be true and correct copies of the BOE records. BOE Exhibit 1 (September 28, 2020, affidavit of Carolyn Abadie Landry, Executive Secretary for the BOE).

FINDINGS OF FACT

- 1) Respondent qualified as a candidate for the office of Commissioner of Agriculture and Forestry, in the October 12, 2019, primary election.⁴ Respondent received eight percent of the vote in the primary election and did not qualify to participate in the general election.⁵
- 2) When he qualified as a candidate in the October 12, 2019, primary election, Respondent certified that he was subject to the provisions of the CFDA.⁶
- 3) Respondent was required to file a 10-P report no later than the tenth day prior to the October 12, 2019, general election (i.e., no later than October 2, 2019).⁷
- 4) Respondent was required to file a 10-G report no later than the tenth day prior to the November 16, 2019, general election (i.e., no later than November 6, 2019).⁸
- 5) Respondent did not file his 10-P report by the October 2, 2019, deadline, and he did not file his 10-G report by the November 6, 2020, deadline.⁹
- 6) On March 6, 2020, the BOE issued a *Late Fee Assessment Order* to Respondent that (a) assessed late fee of \$2,500 and (b) ordered him to file a 10-P report within twenty

⁴ See BOE Exhibit 2 (Louisiana Secretary of State certificate and Notice of Candidacy), BOE Exhibit 3 (Louisiana Secretary of State Candidate Inquiry).

⁵ BOE Exhibit 3.

⁶ BOE Exhibit 2, p. 2.

⁷ This report filing requirement is found in La. R.S. 18:1495.4(B)(4). BOE submitted a sample *Schedule of Reporting and Filing Dates for Candidates & PACs Supporting or Opposing Candidates (Reporting Schedule)*, and that the *Reporting Schedule* lists the required reports by type, periods covered, due dates, and by whom the reports must be filed. However, the sample schedule (BOE Exhibit 4) does not support a factual finding that Respondent actually received a copy of the *Reporting Schedule* when he qualified as a candidate in the October 12, 2019, primary election.

⁸ See La. R.S. 18:1495.4(B)(5).

⁹ BOE Exhibit 8 (Affidavit of Angela Newsom, Director of Campaign Finance for the BOE, stating that, as of August 25, 2020, Respondent had still not filed a 10-P or 10-G report for the October 12, 2019, primary election). As of the date of the hearing, there was nothing in the record showing that Respondent had filed the 10-P or 10-G reports and/or paid the assessed late fees (civil penalties).

days of his receipt of the order.¹⁰ The *Late Fee Assessment Order* was mailed to Respondent at the address provided on his *Notice of Candidacy*: 4037 Egan Highway, Egan, Louisiana 70531 (the Egan Highway address); it was delivered on March 10, 2020.¹¹ Respondent was notified in the letter accompanying the *Late Fee Assessment Order* that he could be subject to “an additional \$10,000 penalty” if he failed to file the 10-P report.¹²

- 7) On March 6, 2020, the BOE issued a *Late Fee Assessment Order* to Respondent that (a) assessed late fee of \$2,500 and (b) ordered Respondent to file a 10-G report within twenty days of his receipt of the order.¹³ The *Late Fee Assessment Order* was mailed to Respondent at the Egan Highway address; it was delivered on March 10, 2020.¹⁴ Respondent was notified in the letter accompanying the *Late Fee Assessment Order* that he could be subject to “an additional \$10,000 penalty” if he failed to file the 10-G report.¹⁵
- 8) The BOE mailed a copy of the *Request for Hearing* to Respondent by certified mail, return receipt requested, at the Egan Highway address; it was delivered on June 5, 2020.¹⁶
- 9) Respondent failed to respond to either *Late Fee Assessment Order* and did not appear for the hearing.¹⁷

¹⁰ BOE Exhibit 6, p. 2.

¹¹ *Id.* at pp. 1-3.

¹² *Id.* at p. 1.

¹³ BOE Exhibit 7, p. 2.

¹⁴ *Id.* at pp. 1-3.

¹⁵ *Id.* at p. 1.

¹⁶ BOE Exhibit 5, pp. 1-11.

¹⁷ *See* BOE Exhibit 8.

CONCLUSIONS OF LAW

Respondent knowingly failed to file a 10-P campaign finance disclosure report by the sixth day after the report was due, and he knowingly failed to file a 10-G campaign finance disclosure report by the eleventh day after the report was due. For each report, the BOE may impose upon Respondent an additional civil penalty as allowed by La. R.S. 18:1505.4(A)(4)(a) and (b).

In hearings under the CFDA before the EAB, the BOE must prove by clear and convincing evidence that the candidate knowingly failed to file a required campaign finance disclosure report (or filed it more than six or eleven days late).¹⁸ A rebuttable presumption of intent not to file reports exists when a candidate fails to submit any required report within three days after the final date for its filing.¹⁹

Underlying “Late Fee” (Civil Penalty) Assessment

Respondent was an unsuccessful candidate Commissioner of Agriculture and Forestry, a “major” level office.²⁰ Every candidate (or his campaign treasurer) is required to file reports of contributions and expenditures on specific days before and after an election.²¹ The 10-P and 10-G are two such reports.²² Respondent was required to file his 10-P report no later than October 2, 2019, the tenth day prior to the primary election. Respondent was required to file his 10-G report no later than November 6, 2019, ten days prior to the general election. Respondent did not file either report by the applicable deadline.

¹⁸ See La. R.S. 42:1141.5(C). “‘Clear and convincing evidence’, in general, means that the fact of guilt must be proven to a greater degree than by ‘a mere preponderance of the evidence’ but less than by ‘beyond a reasonable doubt.’” *Louisiana State Bar Ass’n v. Edwins*, 329 So. 2d 437, 442 (La. 1976).

¹⁹ La. R.S. 18:1505.1(A).

²⁰ La. R.S. 18:1483(11) (“‘Major office’ means the following offices: governor, lieutenant governor, secretary of state, attorney general, state treasurer, commissioner of agriculture . . .”).

²¹ See La. R.S. 18:1495.4.

²² La. R.S. 18:1495.4(B)(4) and (5).

Any candidate for major office who knowingly fails to timely file a required report may be assessed a civil penalty in the amount of \$100 per day, not to exceed \$2,500.²³ The BOE sent Respondent a *Late Fee Assessment Order* assessing the maximum late fee of \$2,500 for his failure to file the required 10-P report.²⁴ The BOE sent Respondent a separate *Late Fee Assessment Order* assessing the maximum late fee of \$2,500 for his failure to file the required 10-G report.

Assessment of Additional Civil Penalty

In addition to the late fee (civil penalty), an additional civil penalty may be imposed for a candidate's continued failure to file a required campaign finance disclosure report.²⁵ Prior to the imposition of any additional civil penalty, the EAB must conduct an adjudicatory hearing in accordance with the Code of Governmental Ethics.²⁶ For campaign finance disclosure reports required to be filed between the time a candidate qualifies and election day, such as Respondent's 10-P report,²⁷ an additional civil penalty not to exceed \$10,000 may be imposed if the EAB determines that the candidate failed to file the report by the sixth day it is due.²⁸ For all other reports, such as Respondent's 10-G report, an additional civil penalty can be assessed if the BOE proves the reports were not filed within eleven days of the due date.²⁹

When he qualified as a candidate in the October 12, 2019, primary election, Respondent certified that he was subject to the provisions of the CFDA. Under the CFDA, Respondent was required to file a 10-P report by October 2, 2019, and he was required to file

²³ La. R.S. 18:1505.4(A)(2)(a)(i).

²⁴ The *Late Fee Assessment Order* was not appealed by Respondent and is not before the EAB in this matter. See BOE Exhibits 6 and 7 and La. R.S. 18:1511.4.1(C) (providing individuals a right to appeal a final order for the payment of civil penalties).

²⁵ See La. R.S. 18:1505.4(A)(4).

²⁶ La. R.S. 18:1505.4(A)(4); La. R.S. 42:1101, *et. seq.*

²⁷ See La. R.S. 18:1495.4(B) and BOE Exhibit 5.

²⁸ La. R.S. 18:1505.4(A)(4)(a).

²⁹ La. R.S. 18:1505.4(A)(4)(b).

a 10-G report by November 6, 2019. The BOE submitted an affidavit from Angela Newsom, the BOE's Director of Campaign Finance, certifying that Respondent had not filed either report as of August 25, 2020. Respondent did not appear at the hearing to submit evidence that he actually filed the 10-P report by the sixth day after it was due, or the 10-G report by the eleventh day after it was due. Further, there is no evidence to rebut the statutory presumption that he intended not to file the report.

The BOE proved by clear and convincing evidence that Respondent knowingly failed to file his 10-P report by October 8, 2019, the sixth day after it was due, and his 10-G report by November 17, 2019, the eleventh day after it was due. For these reasons, the BOE is authorized to impose an additional civil penalty for each report not to exceed \$10,000.

ORDER

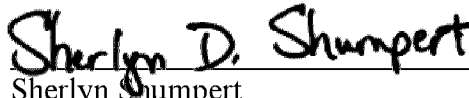
IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose upon Bradley C. Zaunbrecher, in accordance with La. R.S. 18:1505.4(A)(4)(a), an additional civil penalty not to exceed \$10,000 for his failure to file his 10-P campaign finance disclosure report by the sixth day after it was due.

IT IS ORDERED that the Louisiana Board of Ethics, in its capacity as the Supervisory Committee on Campaign Finance Disclosure, is authorized to impose upon Bradley C. Zaunbrecher, in accordance with La. R.S. 18:1505.4(A)(4)(b), an additional civil penalty not to exceed \$10,000 for his failure to file his 10-G campaign finance disclosure report by the eleventh day after it was due.

Rendered and signed November 24, 2020, in Baton Rouge, Louisiana.



A. Brock Avery
Presiding Administrative Law Judge



Sherlyn Shumpert
Administrative Law Judge



Lance B. Vinson
Administrative Law Judge

NOTICE OF TRANSMISSION OF DECISION OR ORDER

I certify that on Wednesday, November 25, 2020, I have sent a copy of
this decision/order to all parties of this matter.

Clerk of Court

Division of Administrative Law

REVIEW RIGHTS

Requests for rehearing, reopening, or reconsideration are subject to the procedures, timing requirements, and legal grounds provided in Louisiana Revised Statute 49:959, with the time for filing calculated pursuant to Louisiana Code of Civil Procedure article 5059. To determine your review rights, you should act promptly and seek legal advice.

To request a rehearing or reconsideration, please send it to one of the addresses indicated below:

EMAIL documents to:
EABprocessing@adminlaw.state.la.us

FAX documents to:
EAB Section Deputy Clerk
(225) 219-9820

MAIL documents to:
DAL – EAB Section
ATTN: EAB Section Deputy Clerk
P. O. Box 44033
Baton Rouge, LA 70804-4033

If you do not request a rehearing of your decision or your rehearing request is denied, you have the right to seek judicial review in accordance with La. R.S. 42:1142(A)(1), with the time for requesting judicial review calculated pursuant to La. C.C.P. art 5059. To determine your review rights, you should act promptly and seek legal advice.